



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: AUGUST 22, 2022

IN THE MATTER OF:

Appeal Board No. 622664

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 15, 2020, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 23, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked full time from January 6, 2020 through September 14, 2020 as a senior residential aide at a homeless shelter.

Following the onset of the COVID-19 pandemic, the claimant's coworkers started experiencing COVID symptoms and testing positive for COVID. Clients also became sick with COVID, and at least two residents died at the shelter because of COVID. As a supervisor, the claimant was present with residents and emergency responders in confined spaces while emergency responders tried without success to resuscitate one resident and, on another occasion, retrieved a resident's body. After the employer required masks in the shelter,

the employer provided some masks for staff, but masks were in short supply. Every person entering or exiting the shelter walked past the claimant's post. Many of the residents did not comply with the mask requirement even after the claimant told them they needed to mask. The claimant complained about the problems to her supervisors, but the supervisors were not present at the workplace because they worked remotely. When the claimant saw a medical advisor at a health clinic, the medical advisor commented that the claimant's workplace was not a safe environment.

The claimant took a leave of absence from his job after informing the employer that the workplace COVID situation made him feel unsafe. When the claimant had nearly exhausted his accrued time off, the employer notified him that he had until November 2, 2020 to return to work. He did not return to work by November 2, 2020 because he did not feel safe working at the employer's premises.

OPINION: The credible evidence establishes that the claimant voluntarily separated from employment when he did not return from a leave of absence on November 2, 2020 because he did not feel safe working at the employer's homeless shelter. We credit the claimant's firsthand testimony about the work conditions and that he had complained about the issue to his supervisors. We note that the employer's witness had no firsthand knowledge of the circumstances of how the claimant's employment ended and was unaware of the conditions of work and whether protocols were being followed. As the claimant has established a reasonable fear for his safety, we conclude that the claimant voluntarily left his employment with good cause (see Appeal Board No. 621384).

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 15, 2020, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER